

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
DERRICK STRONG,

Plaintiff,

-against-

OLYMPUS CORP., d/b/a and/or a/k/a
OLYMPUS AMERICA, INC., et al.,

Defendants.
-----X

LINDSAY, Magistrate Judge:

Before the court is the defendants' letter dated October 3, 2007 requesting that the court hold non-party witness Iris Cox in contempt and compel her to appear for deposition. In addition, defendants move for an order requiring her to reimburse their attorneys' fees and costs incurred. Ms. Cox has not responded to the instant application despite it having been served on her. For the reasons that follow, the application is denied.

According to the defendants, the subpoena served on July 10, 2007 on Ms. Cox together with the statutory \$40 witness fee commanded her to appear for deposition on July 23, 2007 and to bring certain documents with her. By letter dated July 19, 2007, defense counsel advised Ms. Cox that the deposition was rescheduled for August 1, 2007. Ms. Cox did not appear for the deposition. Defendants did not serve a second subpoena.

Rule 45 of the Federal Rules of Civil Procedure provides that an attorney, as an officer of the court, may issue a subpoena on behalf of a court in which the attorney is authorized to practice, or for a court in a district in which a document production is compelled by the subpoena. Fed. R. Civ. P. 45(a)(3). Valid attorney-issued subpoenas under Rule 45(a)(3) operate as enforceable mandates of the court on whose behalf they are served. See, e.g., Advisory Committee Notes, 1991 Amendment to Fed. R. Civ. P. 45; Board of Governors of Federal Reserve System v. Pharaon, 140 F.R.D. 634, 641-42 (S.D.N.Y. 1991).

Here, there is no basis for a finding of contempt pursuant to Rule 45 given the absence of a subpoena personally served on Ms. Cox commanding her to appear on August 1st. Accordingly, the application is denied.

Dated: Central Islip, New York
October 16, 2007

SO ORDERED:

/s/
ARLENE ROSARIO LINDSAY
United States Magistrate Judge